

## **REMARKS**

### **Claim Rejections**

Claim 13 is rejected under 35 U.S.C. § 112, second paragraph. Claims 1-11 and 13-19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Telewski (US 6,021,315) in view of Kildal (US Pub. 2004/0183547). Claims 12 and 20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Telewski as modified by Kildal in view of Leather et al. (US Pub. 2004/0055592).

### **Drawings**

It is noted that the Examiner has accepted the drawings filed on October 25, 2007.

### **Claim Amendments**

By this Amendment, Applicant has canceled claim 8 and amended claims 1 and 13 of this application. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

In the present invention, the control unit 23 controls the signal generator and the attenuating device directly, since the control unit 23 is coupled to the signal generator and the attenuating device directly. However, Telewski teaches the processor 120 merely controlling the attenuating devices 112A-112C indirectly, as illustrated in Fig. 3, since they are coupled indirectly. Therefore, the amended Claims 1 and 13 are distinguishable over the Telewski.

Even if the teachings of Telewski, Kildal, and Leather et al. were combined, as suggested by the Examiner, the resultant combination does not reasonably teach: (claim 1) a control unit coupled directly to the signal generator and the attenuating device for controlling a generation of the signal and adjusting an attenuating range of the attenuating device; nor does the combination teach (claim 13) adjusting a position of the antenna and changing the phase shift between the direct transmission path and the main indirect transmission path of the signal

utilizing a control unit coupled directly to the signal generator and the attenuating device.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious. The Supreme Court, in *KSR International Co. v. Teleflex Inc. et al.*, 550 U.S. 1, 82 USPQ2d at 1391 (2007), reaffirmed the framework of *Graham v. John Deere Co. of Kansas City* for determining obviousness under 35 U.S.C. 103. In that decision, the Supreme Court stated, at page 2:

In *Graham v. John Deere Co. of Kansas City*, 383 U. S. 1 (1966) , the Court set out a framework for applying the statutory language of §103, language itself based on the logic of the earlier decision in *Hotchkiss v. Greenwood*, 11 How. 248 (1851), and its progeny. See 383 U. S., at 15–17. The analysis is objective:

“Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” *Id.*, at 17–18.

While the sequence of these questions might be reordered in any particular case, the factors continue to define the inquiry that controls. If a court, or patent examiner, conducts this analysis and concludes the claimed subject matter was obvious, the claim is invalid under §103.

The Supreme Court, further explained that:

Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue. To facilitate review, this analysis should be made explicit. See *In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006) ("**[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness**"). *KSR* at 1396 (*Emphasis Added*).

Applicant submits that the above-presented arguments clearly indicate that the Examiner has failed to provide an "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness" for combining selected elements of *Telewski* with selected elements of *Kildal* and/or *Leather et al.* *KSR* at 1396 (citing *In re Kahn* at 988). Clearly, such a combination is not an acceptable combination under 35 U.S.C. §103. The rejections of Applicant's claims as being rendered by the aforementioned combinations of references under 35 U.S.C. §103 are respectfully traversed.

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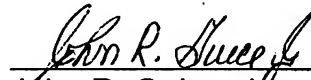
**Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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